

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.1069 of 2013

JUDGMENT:

This second appeal is filed by the plaintiff, under Section 100 of CPC, assailing the decree and judgment dated 01.6.2013 passed in A.S.No.145 of 2012 on the file of the Court of I Additional Senior Civil Judge, Kakinada, wherein and whereby the decree and judgment dated 27.2.2012 in O.S.No.590 of 2007 on the file of the Court of Principal Junior Civil Judge, Kakinada, dismissing the suit for mandatory injunction, was confirmed.

2. Heard the learned counsel for the appellant and perused the record.

3. The parties to the second appeal will hereinafter be referred to as they were arrayed before the trial Court, to avoid confusion.

4. It is the case of the plaintiff that he purchased vacant site shown as A B C D E in the plaint plan under a registered sale deed dated 20.3.1978 from Kakarlapudi China Rajababu alias Subbaraju. Total extent of the site was 273 Sq.yards. The plaintiff constructed an R.C.C. building leaving a triangular piece of site, shown as C D E in the plaint plan. The defendant is owner of the site, shown as E D G H F in the plaint plan, wherein an old tiled house was situated. The defendant, with an intention to construct a new house, demolished the existing old tiled house in or about March, 2006. As requested by the defendant, the plaintiff sold triangular piece of site (C D E) to the defendant under a registered sale deed dated 22.4.2006. As per the terms and conditions of the sale deed, the plaintiff is not entitled to construct compound wall

to his house. The defendant, without any right whatsoever, constructed the compound wall. The defendant agreed to continue PVC pipes and drainage pipeline existing in the triangular portion. Having no other alternative, the plaintiff filed the suit for perpetual injunction restraining the defendant from making constructions in “C D E F” vacant site. The plaintiff also sought for mandatory injunction for removal of the compound wall constructed by the defendant.

5. The defendant filed the written statement admitting that he purchased triangular portion of site from the plaintiff under registered sale deed dated 22.4.2006, *inter alia*, contended that after completion of the house, he constructed a compound wall “E C”. The plaintiff filed the suit with an ulterior motive to harass the defendant; hence, the suit may be dismissed.

6. Basing on the pleadings, the trial Court framed the following issues for trial:

1. Whether the plaintiff is entitled for mandatory injunction as prayed for?
2. Whether the plaintiff is entitled for permanent injunction as prayed for?
3. To what relief?

7. To substantiate the case before the trial Court, the plaintiff examined himself as P.W.1 and got marked Exs.A.1 to A.3. P.W.2 was examined to prove that the compound wall was constructed by the defendant, without any right whatsoever. To demolish the case of the plaintiff, defendant examined himself as D.W.1 and got marked Ex.B.1.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the

plaintiff is entitled for perpetual injunction and rejected the claim of the plaintiff so far as mandatory injunction is concerned. The trial Court decreed the suit in part. Feeling aggrieved by the decree and judgment of the trial Court as to rejection of mandatory injunction, the plaintiff preferred the appeal.

9. The first appellate Court, after re-appraising the oral and documentary evidence available on record, arrived at a conclusion that the plaintiff is not entitled to the relief of mandatory injunction; consequently, dismissed the appeal. The unsuccessful plaintiff filed the second appeal.

10. The questions of law urged by the learned counsel for the appellant are as follows:

- (1) Whether the Courts below misconstrued the recitals of Ex.B.1? and
- (2) Whether the terms and conditions of a registered document are binding on the parties to the document or not?

Point Nos.1 and 2:

11. Both the points are interlinked with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

12. The oral and documentary evidence available on record clinchingly establishes that the plaintiff constructed RCC building by leaving triangular portion on the south of it. The plaintiff sold the triangular portion of the suit schedule property to the defendant under a registered sale deed dated 22.4.2006. A perusal of Ex.A.1 reveals that the plaintiff purchased an extent of 273 Sq.yards from one Kakarlapudi China Rajababu alias Subbaraju

under Ex.A.1. The property covered under Ex.B.1 is the part and parcel of the property covered under Ex.A.1. The defendant constructed a house in “F G H D” as shown in the plaint plan. After completion of the house, the defendant constructed a compound wall “F C” as shown in the plaint plan.

13. The crucial question that falls for consideration is:

Whether the defendant is entitled to construct “F C” compound wall or not?

14. It is the case of the plaintiff that PVC pipes and drainage pipeline are situated in the site of the plaintiff. As per the terms and conditions of Ex.B.1 sale deed, the defendant is not entitled to remove PVC pipes and drainage pipeline. For one reason or the other, the defendant did not file appeal challenging the decree and judgment of the trial Court so far as granting of perpetual injunction in favour of the plaintiff is concerned; hence, the decree and judgment dated 27.2.2012 in O.S.No.590 of 2007 to that extent became final.

15. It is the case of the plaintiff that as per the terms and conditions of Ex.B.1, the defendant is not entitled to construct compound wall from “F to C” as shown in the plaint plan. In order to substantiate the argument, learned counsel for the appellant has drawn the attention of this Court to Ex.B.1. This Court carefully scanned the recitals of Ex.B.1. There is no mention in Ex.B.1 that the defendant is not entitled to construct compound wall more particularly from “F to C”. There is no recital in Ex.B.1 that the defendant ought to have left some place on the south of “A E C B” of plaint plan. In the absence of such a stipulation, the

plea of the plaintiff that the defendant is not entitled to construct compound wall from “F to C” of plaint plan is not sustainable.

16. The plaintiff is one of the parties to Ex.B.1, which is a registered sale deed dated 22.4.2006 executed by the plaintiff in favour of the defendant. It is needless to say that a party to a registered document is not is not entitled to adduce oral evidence contrary to its recitals. Accordingly, the plaintiff is not entitled to adduce oral evidence contrary to the recitals of Ex.B.1, registered sale deed to the effect that the defendant is not entitled to construct compound wall “F to C”. It is not the case of the plaintiff that the defendant is not the owner of “F C” portion. The plaintiff, having admitted the title of the defendant, is not entitled to seek the relief of mandatory injunction to demolish the compound wall “F C” as shown in the plaint plan. It is a matter of common knowledge that owner of the house will construct compound wall in order to protect his property as well as to have privacy from the public view. If mandatory injunction is granted in favour of the plaintiff to demolish “F C” compound wall, certainly it will cause untold hardship and financial loss to the defendant. The trial Court as well as appellate court considered the recitals of Ex.B.1 in right perspective and arrived a a conclusion that the defendant is not entitled to seek the relief of mandatory injunction without stipulation in Ex.B.1 sale deed.

17. Having regard to the facts and circumstances of the case, this Court is of the considered view that the findings recorded by the Courts below are based on evidence much less legally admissible evidence. If the findings recorded by the Courts below

are perverse, then only this Court can interfere with such findings. I am fully endorsing the findings recorded by the Courts below. There is no question of law much less substantial question of law to interfere with the findings recorded by the Courts while exercising the jurisdiction of this Court under Section 100 of CPC.

18. In the result, the second appeal is dismissed at the stage of admission. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 05.11.2018
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